

DEC 22 1997

NEBRASKA ADMINISTRATIVE CODE

TITLE 252, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 1

NEBRASKA DEPARTMENT OF MOTOR VEHICLES

RULES AND REGULATIONS GOVERNING HEARINGS TO CONTEST THE
DEPARTMENT OF MOTOR VEHICLES' DETERMINATION OF THE
MANUFACTURER'S SUGGESTED RETAIL PRICE OF PASSENGER CARS,
TRUCKS, UTILITY VEHICLES, AND VANS, WEIGHING UP TO FIVE (5) TONS
PURSUANT TO NEB.REV.STAT. § 60-3005.

Issue Date: 11-11-97

TITLE 252 NEBRASKA DEPARTMENT OF MOTOR VEHICLES

CHAPTER 1 RULES AND REGULATIONS GOVERNING HEARINGS TO CONTEST THE DEPARTMENT OF MOTOR VEHICLES' DETERMINATION OF THE MANUFACTURER'S SUGGESTED RETAIL PRICE OF PASSENGER CARS, TRUCKS, UTILITY VEHICLES, AND VANS, WEIGHING UP TO FIVE (5) TONS PURSUANT TO NEB.REV.STAT. § 60-3005.

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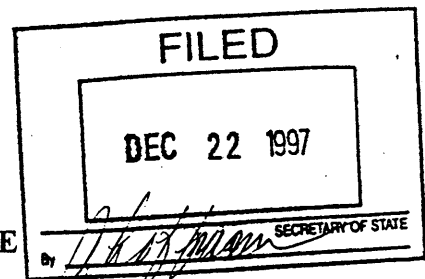
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CHAPTER 1 RULES AND REGULATIONS GOVERNING HEARINGS TO CONTEST THE DEPARTMENT OF MOTOR VEHICLES' DETERMINATION OF THE MANUFACTURER'S SUGGESTED RETAIL PRICE OF PASSENGER CARS, TRUCKS, UTILITY VEHICLES, AND VANS, WEIGHING UP TO FIVE (5) TONS PURSUANT TO NEB.REV.STAT. § 60-3005.

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001 Scope of this Chapter. Rules and regulations governing hearings to contest the Department of Motor Vehicles' determination of the manufacturer's suggested retail price of passenger cars, trucks, utility vehicles, and vans, weighing up to five (5) tons pursuant to Neb.Rev.Stat. § 60-3005.

002 Definitions. As used in this chapter.

002.01 Answer shall mean the Director's response to the objection. The answer shall contain the identifying information the Director has in his or her possession about the petitioner's motor vehicle and his or her determination.

002.02 Contested case shall mean a proceeding before the Department in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after hearing before the Department.

002.03 Department shall mean the Nebraska Department of Motor Vehicles.

002.04 Determination means a motor vehicle's value when new, which, for motor vehicle tax purposes under these rules and regulations, is the MSRP for a motor vehicle the year it was new using the manufacturer's body type and model with standard equipment and not including transportation or delivery cost.

002.05 Director shall mean the Director of the Nebraska Department of Motor Vehicles.

002.06 Ex parte communication shall mean an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties is not given. Ex parte communication shall not include:

002.06A Communications which do not pertain to the merits of a contested case;

002.06B Communications required for the disposition of ex parte matters as authorized by law;

APPROVED

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E. BENJAMIN NELSON
GOVERNOR

APPROVED

DON STENBERG
ATTORNEY GENERAL

BY
Assistant Attorney General
DATE 12/19/97

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002.06C Communications in a rate making or rule making procedure; and

002.06D Communications to which all parties have given consent.

002.07 **Hearing officer** shall mean the person or persons conducting a hearing, contested case, or other proceedings pursuant to the Administrative Procedures Act, whether designated as the presiding officer, administrative law judge, or some other title designation.

002.08 **MSRP** shall mean the manufacturer's suggested retail price as determined by using the manufacturer's body type and model with standard equipment and not including transportation or delivery cost. The Director may discover the MSRP by whatever reliable means may be available.

002.09 **Objection** means the initial document (*Attachment 1*) filed with the Director that sets forth the objection to the Director's determination.

002.10 **Party** means the person by or against whom a contested case is brought or a person allowed to intervene in a contested case.

002.11 **Registration date** means the first day of the month in which a motor vehicle must be registered. In the case of a renewal, the date is the first day of the month in which the registration expires. In the case of a new registration, the date is the first day of the month in which the motor vehicle is purchased.

003 **Prohibitions Against Ex Parte Communication.**

003.01 **Prohibitions: When Applicable.** The prohibitions found in this section shall apply beginning at the time notice for hearing is given.

003.02 **Prohibitions: to Whom Applicable.**

003.02A **Persons in Decision Making Roles.** No party in a contested case or other person outside the Department having an interest in the contested case shall make or knowingly cause to be made an ex parte communication to the hearing officer or to a Department head or employee who is or may reasonably be expected to be involved in the decision making process of a contested case.

003.02B **Investigators.** No Department head or employee engaged in the investigation or enforcement of a contested case shall make or knowingly caused to be made an ex parte communication to a hearing officer or to a Department head or employee who is or may reasonably be expected to be involved in the decision making process of a contested

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case.

003.03 Disclosures of Contacts. The hearing officer or Department head or employee who is or may reasonably be expected to be involved in the decision making process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication set forth in subsections 003.02A through 003.02B shall file in the record of the contested case:

003.03A All such written communications;

003.03B Memorandum stating the substance of all such oral communications; and

003.03C All written responses and memorandum stating the substance of all oral responses to all the ex parte communications.

003.03D The filing shall be made within two (2) working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.

003.03E Filing and notice of filing provided under subsection 003.03D shall not be considered on the record and reasonable notice for purposes of the definition of ex parte communications.

004 Intervention in a Contested Case.

004.01 Intervention in a contested case shall be allowed when the following requirements are met:

004.01A A petition for intervention must be submitted in writing to the hearing officer or designee at least five (5) days before the hearing. Copies must be mailed by the petitioner to all parties named in the hearing officer's notice of the hearing;

004.01B The petition must state facts demonstrating the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

004.01C The hearing officer or designee must determine that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention.

004.02 The hearing officer or designee, at least twenty-four (24) hours before the hearing,

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shall issue an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order.

004.02A The hearing officer or designee may modify the order at any time, stating the reasons for the modification.

004.02B The hearing officer or designee shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

005 Commencement of a Contested Case.

005.01 The contested case begins with the filing of an objection with the Director.

005.02 The parties to a contested case shall be the person who files the objection and the Director.

005.03 A party may appear on his or her own behalf in a contested case or may be represented by an attorney or other representative as permitted by law.

005.04 The pleadings in a contested case may include the completed objection, answer, and notice of hearing. The objection and the answer shall be completed on forms approved by the Department and filed with the Director. The objection must state why the determination is incorrect. In the event a person files an objection pursuant to 005.04B, the petitioner must also state how he or she is affected by the registration of the particular motor vehicle whose valuation is being objected to.

005.04A Objections to Determination at the Time of Certification. Any person or taxing official may file an objection within ten (10) days after a determination has been certified by the Director.

005.04A1 If the Director finds that his or her determination of the MSRP is incorrect, he or she shall correct the MSRP for all motor vehicles in the class.

005.04A1a Example: The Director determines the MSRP for a Ford Contour four-door GL 4/6 cylinder is \$14,645. A county official objects, and as a result of the objection, the Director determines the MSRP is \$15,195. The MSRP as certified to the county officials will be changed and every Ford Contour four-door GL 4/6 cylinder will be taxed on the MSRP of \$15,195.

005.04B Objections to Determination at the Time of Registration. Any affected person may file an objection to the determination of the Director not more than fifteen

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(15) days before and not later than thirty (30) days after the registration date for the particular motor vehicle that is the subject of the objection.

005.04B1 If the Director finds his or her determination of the MSRP is incorrect, he or she shall apply the corrected MSRP only to the motor vehicle that is the subject of the objection.

005.04B1a Example: The Director determines the MSRP for a Ford Contour four-door GL 4/6 cylinder is \$14,645. The owner of such a Ford Contour files an objection to the determination ten (10) days before the motor vehicle's registration date. The Director finds that correct MSRP is \$13,995. The finding will apply only to the motor vehicle owned by the person filing the objection and the tax will be adjusted only on his or her motor vehicle. The Director will not adjust the tax for other Ford Contour four-door GL 4/6 cylinder registered in the state.

005.04C The obligation to register the motor vehicle and pay the taxes and fees as the county official has figured them is not stayed by the filing of an objection. If the Department decides in the objector's favor, the tax will be adjusted and refunded, if appropriate. If the Department determines the tax should be higher, the objector will be liable for the additional tax.

005.05 All pleadings shall be filed with the Department at its official office. Filing may be accomplished by personal delivery or mail and will be received during the Department's regular office hours.

005.06 In computing time prescribed or allowed in this section or by any applicable statute in which the method of computing time is not specifically provided, days will be computed by excluding the day of the act of event and including the last day of the period. If the last day of the period falls on a Saturday, Sunday, or state holiday, the period shall include the next working day.

006 Hearing Officer: Criteria.

006.01 The Department may delegate to a hearing officer other than the Director the functions of conducting a prehearing conference and/or a hearing and submitting a recommended decision to the Department.

006.02 A person who has served as an investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection 006.04.

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006.03 A person who is subject to the authority, direction or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection 006.04.

006.04 If all parties consent, a person who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may assist a hearing officer in the preparation of orders.

006.05 A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as hearing officer or assist a hearing officer in the same proceeding.

006.06 A person may serve as hearing officer at successive stages of the same contested case.

007 Prehearing Procedures.

007.01 Prehearing Conferences and Orders. A hearing officer designated to conduct a hearing may determine, subject to these rules and regulations, whether a prehearing conference will be conducted. If a prehearing conference is not held, a hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of a hearing. If a prehearing conference is conducted:

007.01A The hearing officer shall promptly notify the Department that a prehearing conference will be conducted. The Department may assign another hearing officer for the prehearing conference; and

007.01B The hearing officer for the prehearing conference shall set the time and place of the conference and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. The Department shall give notice to other persons entitled to notice.

007.01C The notice referred to in subsection 007.01B shall include the following:

007.01C1 The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;

007.01C2 The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the Department;

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007.01C3 The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

007.01C4 A statement of the time, place, and nature of the prehearing conference;

007.01C5 A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

007.01C6 The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference;

007.01C7 A statement that a party who fails to attend or participate in a prehearing conference, hearing or other stage of a contested case or who fails to comply with a prehearing order may be held in default under the Administrative Procedures Act; and

007.01C8 Any other matters that the hearing officer considers desirable to expedite the proceedings.

007.02 The hearing officer shall conduct a prehearing conference, as may be appropriate, to deal with such matter as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence, or cross examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross examination, rulings regarding issuance of subpoenas, discovery orders, and protective orders, and such other matters as will promote the orderly and prompt conduct of the hearing. The hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

007.03 The hearing officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

007.04 Discovery in Contested Cases.

007.04A The hearing officer or a designee, at the request of any party or upon the hearing officer's own motion, may issue subpoenas, discovery orders, and protective orders in accordance with the rules of civil procedure except as may otherwise be

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prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

007.04B Any prehearing motion to compel discovery, motion to quash, motion for protective order or other discovery-related motion shall:

007.04B1 Quote the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena or excerpt of a deposition;

007.04B2 State the reasons supporting the motion;

007.04B3 Be accompanied by a statement setting forth the steps or efforts made by the moving party or his or her counsel to resolve the issues raised and that agreement has not been achieved; and

007.04B4 Be filed with the Department. The moving party must serve copies of all such motions to all parties to the contested case.

007.04C Other than is provided in subsection 007.04B4, discovery materials need not be filed with the Department.

007.05 Continuances. The hearing officer may, in his or her discretion, grant extensions of time or continuances of hearings upon the hearing officer's own motion or at the timely request of any party for good cause shown. A party must file a written motion for continuance which states in detail the reasons why a continuance is necessary and serve a copy of the motion on all other parties.

007.05A Good Cause. Good cause for an extension of time or continuance may include but is not limited to, the following:

007.05A1 Illness of the party, legal counsel, or witness;

007.05A2 A change in legal representation; or

007.05A3 Settlement negotiations are underway.

008 Conducting a Contested Case Hearing.

008.01 Burden of Proof. The petitioner shall have the burden of proving that the Director's determination is wrong.

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008.02 Order. At the discretion of the hearing officer, the hearing may be conducted in the following order:

008.02A The hearing officer calls the hearing to order. He or she entertains any preliminary motions, stipulations or agreed orders.

008.02B Each party may be permitted to make an opening statement. Opening statements take place in the same order as the presentation of evidence.

008.02C Presentation of evidence.

008.02C1 Evidence will be received in the following order:

008.02C1a The hearing officer shall receive into evidence the Director's answer stating from his or her records the make, model, and year, or other appropriate identification information about the petitioner's motor vehicle; the MSRP, and the source for determining the MSRP;

008.02C1b The petitioner presents evidence to show why the Director's determination is incorrect;

008.02C1c A representative for the Director may present rebuttal evidence;

008.02C1d The petitioner may present surrebuttal evidence.

008.02C2 With regard to each witness who testifies, the following examination may be conducted:

008.02C2a Direct examination by the party who calls the witness;

008.02C2b Cross examination by the opposing party;

008.02C2c Redirect examination by the party who calls the witness; and

008.02C2d Recross examination by the opposing party.

008.02D After the evidence is presented, each party may have an opportunity to make a closing argument. Closing arguments shall be made in the same order as the presentation of evidence. The hearing officer may request that the parties submit briefs in lieu of closing arguments.

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008.03 Evidence.

008.03A In contested cases, a Department or hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

008.03B Any party to a formal hearing before the Department from which a decision may be appealed to the courts of this state may request that the Department be bound by the rules of evidence applicable in district court by delivering to the Department at least three (3) days prior to the holding of the hearing a written request for a formal hearing. The request shall include the requesting party's agreement to be liable for the costs of the hearing and of any appeal or review. The party shall also agree to procure and pay for a court reporter.

008.03C Documentary evidence may be received in the form of copies, or excerpts, or incorporated by reference.

008.03D The Department may include in the record any records and documents in its possession. No factual information or evidence other than the record shall be considered in the determination of the case.

008.03E A hearing officer or designee may administer oaths and issue subpoenas in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

008.03F The Department shall give effect to the rules of privilege recognized by law.

008.03G The Department may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge and the rules and regulations adopted and promulgated by the Department.

008.03G1 Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of materials so noticed.

008.03G2 Parties shall be afforded an opportunity to contest facts so noticed.

008.03G3 The record shall contain a written record of everything officially noticed.

008.03H The Department may utilize its experience, technical competence and

specialized knowledge in the evaluation of the evidence presented to it.

008.04 Time, Place, and Manner of Hearing. The hearing officer may conduct all or part of the hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, and if technically feasible, to see the entire proceeding while it is taking place. Hearings shall be held at such locations and at such times as may be determined by the Director taking into account the convenience of all parties and the purpose of the hearing.

008.05 Official Record.

008.05A The Department shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe the record of the proceedings unless requested for the purpose of rehearing of appeal, in which event the Department shall furnish the transcript and record upon request and tender of the cost of preparation.

008.05B The Department shall maintain an official record of each contested case under the Administrative Procedure Act for at least four (4) years following the date of the final order.

008.05C The Department record shall consist only of the following:

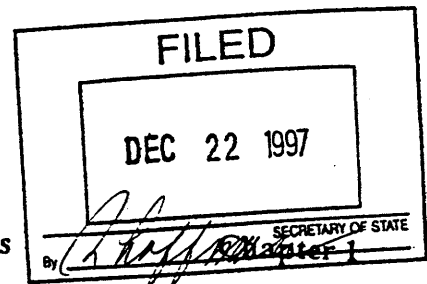
008.05C1 Notices of all proceedings;

008.05C2 Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Department pertaining to the contested case;

008.05C3 The record of the hearing before the Department, including all exhibits and evidence introduced during the hearing, a statement of matters officially noticed by the Department during the proceedings, and all proffers of proof and objections and rulings thereon; and

008.05C4 The final order.

008.05D As provided in 53 NAC 4, Section 002.03, the hearing officer or Director who is or may reasonably be expected to be involved in the decision making process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication as set forth in that subsection shall make the appropriate filings which shall be included in the official record of the contested case.



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008.05E Except to the extent that the Administrative Procedure Act or another statute provides otherwise, the Department record shall constitute the exclusive basis for Department action in contested cases under the act and for judicial review thereof.

008.06 Costs. All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered.

009 Decision and Order in a Contested Case.

009.01 Every decision and order adverse to a party to the proceeding, rendered by a Department in a contested case, shall be in writing or stated in the record and shall be accompanied by a findings of fact and conclusions of law.

009.02 The decision and order shall include:

009.02A The name of the Department and name of the proceeding;

009.02B The time and place of the hearing;

009.02C The names of all parties and/or their attorneys who entered an appearance at the hearing;

009.02D The findings of fact consisting of the action taken by the Department as a result of the facts found and the legal conclusions arising therefrom.

009.02E The conclusions of law consisting of the applications of the controlling law to the facts found and the legal conclusions arising therefrom.

009.02F The order consisting of the action taken by the Department as a result of the facts found and the legal conclusions therefrom.

009.03 Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record.

010 Appeals.

010.01 Any person aggrieved by a final decision in a contested case may appeal the Director's final determination. The appeal shall be in accordance with the Tax Equalization and Review Commission Act.

Attachment 1

APPROVED

DEC 22 1997

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APPROVED

DON STENBERG
ATTORNEY GENERAL

BY *Pat R. Smith*

Assistant Attorney General

DATE *12/19/97*



OBJECTION TO DETERMINATION OF MOTOR VEHICLE TAX

DEC 22 1997

Any person or taxing official may file an objection within ten (10) days after the September Manufactured Suggested Retail Price (MSRP) determination has been certified by the Director.

or

Any affected person may file an objection to the MSRP determination of the Director not more than fifteen (15) days before and not later than thirty (30) days after the registration date for the particular motor vehicle that is the subject of the objection. All pleadings shall be filed with the Department at the Legal Division, Department of Motor Vehicles, 301 Centennial Mall South, P.O. Box 94789, Lincoln, NE 68509-4789. Filing may be accomplished by personal delivery or mail and will be received during the Department's regular office hours.

Name: _____

Address: _____

Phone: () _____

I object to the Director's MSRP determination of the value when new of the following motor vehicle:

Manufacturer	Year	Model	Body Type
VIN (if applicable): _____			
Registration Date (if applicable): _____			
The Director's determination of MSRP is			\$ _____
The correct MSRP is			\$ _____
Source for your MSRP: _____			
Why do you believe the Director's MSRP determination is wrong? _____			

The filing of an objection does not affect the obligation to register the motor vehicle and pay the taxes and fees as the county official has figured them.

Signature _____

Date _____

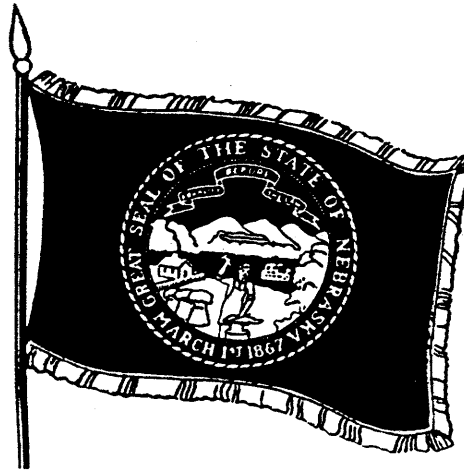
This objection must be delivered to the Legal Division, Department of Motor Vehicles, 301 Centennial Mall South, P.O. Box 94789, Lincoln, NE 68509-4789. Phone: (402) 471-9593

STATE OF

NEBRASKA

United States of America,
State of Nebraska

} ss.



Department of State

I, Scott Moore, Secretary of State of the
State of Nebraska do hereby certify that

*TITLE 252 - Nebraska Administrative Code, Chapter 1 - RULES AND
REGULATIONS GOVERNING HEARINGS TO CONTEST THE DE-
PARTMENT OF MOTOR VEHICLES' DETERMINATION OF THE
MANUFACTURER'S SUGGESTED RETAIL PRICE OF PASSENGER
CARS, TRUCKS, UTILITY VEHICLES, AND VANS, WEIGHING UP
TO FIVE (5) TONS PURSUANT TO NEB.REV.STAT. 60-3005 - as
originally adopted by the Department of Motor Vehicles and filed in the
Office of the Secretary of State on December 22, 1997.*

*I further certify that there have been no amendments nor changes to
the above mentioned Rules and Regulations since the above filing date
and have been in full force and effect through and including the current
date of certification.*

*Further, I hereby certify that said Rules and Regulations were approved
in the Offices of the ATTORNEY GENERAL and the GOVERNOR of
the State of Nebraska.*

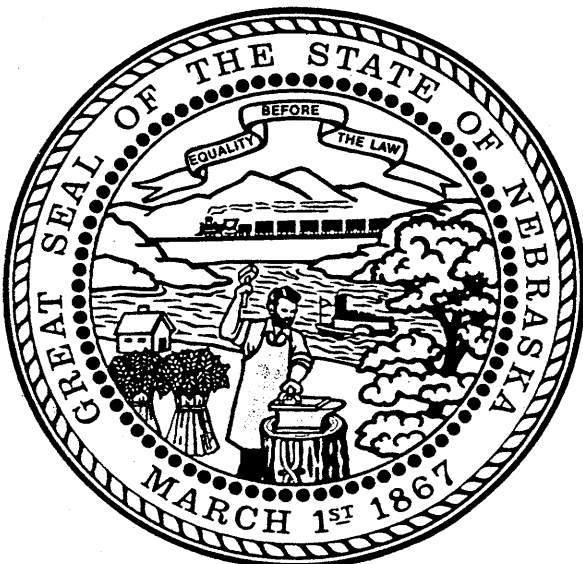
In Testimony Whereof,

I have hereunto set my hand and
affixed the Great Seal of the State
of Nebraska.

Done at Lincoln this

Second

day of February
in the year of our Lord, one thou-
sand nine hundred and ninety eight



Scott Moore

SECRETARY OF STATE

DEPUTY